

Claimant injured her left knee on April 14, 1998, when she was kicked by a resident while working for the respondent. Respondent provided claimant with medical treatment for the left knee injury through orthopedic surgeon Bradley W. Bruner, M.D., a member of

Advance Orthopaedic Associates. At the time of the December 16, 1999, preliminary hearing, Dr. Bruner had performed two surgical procedures on claimant's left knee. After each surgery, the doctor had prescribed for claimant to undergo physical therapy.

Respondent's insurance carrier, Liberty Mutual Insurance Company, did not think claimant was making satisfactory progress, and claimant was referred for an independent medical examination to Kenneth A. Jansson, M.D., an orthopedic surgeon, also a member of the Advanced Orthopaedic Associates. Dr. Jansson saw claimant on October 27, 1999, for the independent medical examination. After the examination, respondent's insurance carrier designated Dr. Jansson as claimant's treating physician instead of Dr. Bruner.

Thereafter, claimant filed her Application for Preliminary Hearing, requesting that Dr. Bruner be designated as her authorized treating physician for any additional necessary surgical treatment. At the preliminary hearing, claimant, however, did not object if Dr. Jansson was designated as her authorized physician for any necessary conservative treatment.

The Administrative Law Judge granted claimant's request and designated Dr. Bruner as claimant's authorized treating physician for any additional necessary surgical treatment. The Administrative Law Judge also designated Dr. Jansson as claimant's treating physician for all necessary conservative treatment.

On appeal, respondent contends the Administrative Law Judge did not have the statutory authority to appoint Dr. Bruner as claimant's authorized treating physician to perform any necessary surgery. The respondent argues, before a change in an authorized physician can be made, the statute requires the Administrative Law Judge to make a finding that the physician's services were unsatisfactory. Further, the statute requires the next authorized physician to be selected by the claimant from a list of three physicians submitted by the respondent.¹ The respondent contends the Administrative Law Judge exceeded her jurisdiction because she did not follow this statutory procedure. The respondent requests the Appeals Board remand the case to the Administrative Law Judge with instructions to follow the prescribed statutory procedure.

In support of its argument, the respondent cites the decision by the Appeals Board in Chilargi v. W. H. Braums, Inc., WCAB Docket No. 198,309 (June 1996), where one Appeals Board member decided a preliminary hearing appeal and determined that an Administrative Law Judge's decision without first allowing the respondent to provide a list of three physician's exceeded the Administrative Law Judge's jurisdiction.

But, after the Chilargi decision, the majority of the Appeals Board has consistently found that a request for a change in physician is essentially a request for medical treatment

¹See K.S.A. 1999 Supp. 44-510(c)(1).

and is a question the Administrative Law Judge has authority to decide.² Thus, in this case, the Administrative Law Judge did not exceed her jurisdiction and the Appeals Board does not have jurisdiction, at this juncture of the proceedings, to review this question.

The Appeals Board also finds it is not necessary to repeat the findings and conclusions it has previously made concerning this issue that are set forth in prior Appeals Board Orders. Therefore, those findings and conclusions are incorporated herein and made a part of this order.³

WHEREFORE, the Appeals Board finds and concludes that respondent's appeal should be dismissed as the Appeals Board is without jurisdiction to consider the issue raised by the respondent and the Administrative Law Judge's December 17, 1999, preliminary hearing Order, should, and does, remain in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
John R. Emerson, Kansas City, KS
Lyndon W. Vix, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

²See K.S.A. 1999 Supp. 44-534a.

³See Briceno v. Wichita Inn West, WCAB Docket No. 211,226 (February 1997) and Graham v. Rubbermaid Specialty Products, WCAB Docket No. 219,395 (June 1997).